



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 7-28-98
AGENDA ITEM 11 A
WORK SESSION ITEM _____

TO: City Council and Redevelopment Agency Board Members

FROM: Director of Community and Economic Development

SUBJECT: **Disposition and Development Agreement with American Stores Properties, Inc. for a Proposed Retail Development Located at A Street and Mission Boulevard**

RECOMMENDATION:

It is recommended that the City Council and Redevelopment Agency Board adopt the attached resolution authorizing the Executive Director of the Agency to execute a Disposition and Development Agreement (**DDA**) between the Agency and American Stores **Properties, Inc. (ASPI)** substantially in the same form as indicated in this report and in the attached Section 33433 Report.

BACKGROUND:

The site includes approximately five acres of land located between A and B Streets, from Mission Boulevard to approximately 270 feet west of Watkins Street. Approximately two acres is **Agency-owned** land or City street. There are 14 properties under 9 separate ownerships. The site does not include the retail **properties** fronting B Street between Mission Boulevard and Watkins Street.

The site would be developed with a 67,389 square foot **Lucky/Sav-on** supermarket, plus an additional 11,593 square feet of retail space fronting on B Street. In addition, an 8,000 square foot retail building would be constructed at the corner of Mission Boulevard and A Street. The project would have a total of 384 parking spaces, of which 153 spaces would be located on the roof of the **Lucky-Sav-on** building and would be **accessed** by a driveway ramp.

The project calls for the acquisition of the properties, relocation of all tenants in accordance with State law, and clearance of the site. A Relocation Plan for the Project has been prepared **and** is on this evening's agenda for consideration by the Agency Board. In addition, both Watkins Street and the public alley known as Prince Street, will need to be vacated, and there is a separate item on tonight's agenda regarding these actions. Finally, it is anticipated that some environmental remediation will be **necessary**, including the removal of underground storage tanks and the potential clean-up of a former dry cleaning operation.

ASPI has agreed to acquire the vacant parcel adjacent to the Victorian-era building at 752 B Street, and to move the Victorian to that lot. The Developer will also offer the Harder house located at 753 A Street for sale to the public, including nonprofit organizations.

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ASP1 has renewed its existing lease for the store at B and Foothill Boulevard for a period of five years, commencing in June, 1998. After the expiration of the fifth year, there will remain a total of 25 additional years to extend the lease at favorable terms. This affords ASP1 and the Agency greater ability to control the re-leasing of the store. Staff and ASP1 prepared a list of potential tenants for the site, which include a major bookstore, a computer/office supply store, coffee house and or restaurant, or soft goods such as a clothing store.

Key Elements of the DDA:

The following is a summary of the key elements of the DDA. In addition, staff has attached a Summary Report for the DDA prepared in accordance with Section 33433 of California Redevelopment Law. This document provides additional detail regarding the proposed DDA.

The DDA calls for ASP1 to attempt to buy the property that is owned by third parties. ASP1 will either acquire the property, or notify the Agency that it wishes the Agency to acquire the property on its behalf. The Agency must then prepare a budget for the acquisition of the outstanding property and submit this for **ASP1's** review and approval. The budget will include not only the estimated cost to acquire, but also, all the other costs that would be incurred by the Agency, including appraisal costs, attorney's fees and potential litigation costs, escrow and title costs, and all relocation costs. The Developer may either approve the budget, including all acquisition costs, or terminate the DDA.

If ASP1 approves the budget, they will provide the Agency with \$50,000 of "working capital" to begin the acquisitions, and a letter of credit or other security in the total budget amount, less the \$50,000. As properties are acquired, the letter of credit may be periodically reduced. The working capital will be replenished by ASP1 upon submittal of the Agency's invoices. If ASP1 does not pay for a particular cost that is within budget in a timely way, the Agency may draw upon the letter of credit to ensure payment of the obligation. Any proposed increases to the budget must be submitted for approval by **ASP1**.

The Agency will attempt to buy any outstanding property by negotiation, based on fair market appraisal. If the Agency is unable to acquire the property, the Agency Board will be asked to consider adopting resolutions of necessity to acquire the outstanding property by eminent domain. The Agency is not obligated under the terms of the DDA to adopt such resolutions. The Agency is legally required to hold a hearing for the existing property owner prior to taking such an action. If the Agency does not adopt such a resolution(s), the Developer may terminate the DDA. If the Agency does adopt such resolution(s), the Agency will then initiate eminent domain actions against the property. The Agency agrees to convey all the property it acquires to ASP1 as soon as the Agency takes title or receives an order of possession from the court regarding property under condemnation.

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The Agency will be responsible for the relocation of the tenants, however, ASP1 will pay all the direct costs of any relocation assistance in the same manner as for the acquisition costs, including payments to tenants, moving costs and the relocation agent.

Some environmental contamination has been discovered on the site, and ASP1 ~~has~~ further investigation work to do. The Agency agrees that, if necessary, it will cooperate with ASP1 regarding the hazardous materials remediation work. ASP1 will pay all the costs of such remediation.

ASP1 will pay the Agency a total of **\$650,000** for its land. This includes the vacant lot at the corner of A ~~Street~~ and Mission Boulevard, the parking lot parcels and a **portion** of Watkins Street, for a total of approximately 1.38 acres. The underlying fee ownership to Watkins Street belongs to the adjacent property owners once the street is abandoned, and the underlying title to the alley known as Prince Street is in private ownership. The land price represents an overall value of approximately \$10.84 per square foot, and is based on the following appraised values: \$9 per square foot for the Agency's portion of the street, \$10 per square foot for the parking lot area, and \$12 per square foot for the lot at the corner of A and Mission Boulevard. Given that the parking area does not have good visibility to A Street or Mission Boulevard, and given the irregular configuration of the lots, staff believes this value to be a fair one. In addition, while the vacant lot at the corner of A and Mission Boulevard is a prime one, the lot is approximately 6,300 square feet, and thus has limited building utility. Finally, the street area only has value assuming that other properties can be assembled and the street vacated. The Agency's land will be sold to ASP1 after all other properties have been obtained and conveyed to the Developer.

The Agency's property is being sold "as is", however, ASP1 will have a due diligence period to investigate the property. If hazardous materials are discovered as a result of this investigation, the price of the Agency's property may be reduced in recognition of the cost of remediation, consistent with **ASP1's** policy toward other property owners.

Lastly, the DDA contains provisions both for the moving of the Victorian building at 752 B Street and the Harder House, and the leasing of the existing facility at B Street and Foothill Boulevard. The provisions regarding the Victorian and the Harder House are as noted in the previous section. The provisions regarding leasing of the existing Lucky store at B Street and Foothill Boulevard are essentially that ASP1 will make a reasonable effort to sublease the building, and that the Agency has the reasonable right to approve the sublessee. The DDA makes specific references as to what would be reasonable for the Agency to disapprove (e.g. auto parts store, thrift store, church) and what the Agency will approve (e.g. a book store, retail sale of office supplies or high quality home furnishings or clothing) subject to the City's land use approval process. The DDA also calls for ASP1 and the Agency to work cooperatively to find a mutually acceptable subtenant.

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It is anticipated that ASP1 will continue its environmental assessment and start to acquire properties in the fall of this year. Relocation activities would begin as ASP1 closes escrow on the various properties. The Agency will submit a budget to acquire the outstanding properties, and could start making offers by November. While voluntary efforts at acquisition will continue to be emphasized, such eminent domain actions as are ~~necessary~~ may be considered in early 1999. The Agency could receive possession of parcels under eminent domain by April, complete its relocation activities and transfer its properties to **ASPI**. Construction could begin in the summer of 1999. The DDA allows a year for construction.

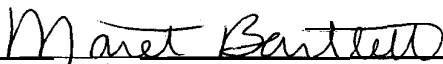
Section 33433 Report:

Under state law, the attached Summary Report must be prepared whenever the Agency sells property that it has acquired with tax increment funds. The Report outlines the costs that are expected to be incurred by the Agency under the terms of the DDA, which are none. In addition, the Report outlines the estimated fair market value of the property at its highest and best use and the estimated sales price of the property to the Developer. In the case of this project, these amounts are considered to be the same.

Recommendation:


Staff **recommends** approval of the proposed DDA between the Agency and **ASPI**. The Agency will bear no direct cost for the project. In additions, the Agency will receive \$650,000 for its land, and an estimated \$115,000 in annual tax increment. Finally, the City will receive an estimated \$121,000 per year sales tax revenue.

Prepared by:



Maret Bartlett
Redevelopment Director

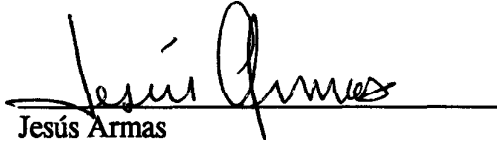
Recommended by:



Sylvia Ehrental
Director of Community & Economic Development

Council and Redevelopment
Agency Board Members
July 28, 1998

Approved by:



Jesús Armas
Executive Director

Attachment A: Summary Report for the DDA

DRAFT

dm 7-21-98

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA-__

Introduced by Agency Member

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH AMERICAN STORES PROPERTIES, INC. RELATING TO THE PROPOSED RETAIL DEVELOPMENT FOR THE SITE LOCATED BETWEEN "A" STREET AND "B" STREET, WEST OF MISSION BOULEVARD

WHEREAS, the Redevelopment Agency of the City of Hayward ("Agency") has negotiated the terms of a proposed Disposition and Development Agreement ("DDA") to be executed by American Stores Properties, Inc. ("ASPI"), which pertains to the development of a retail center project ("Lucky's Store Project") on the site located between "A" and "B" Streets, west of Mission Boulevard and east of the downtown Hayward BART station ("the Site"); and

WHEREAS, the Site contains approximately five acres, consisting of 14 properties under 9 separate ownerships, of which approximately two acres is Agency-owned land and City of Hayward public streets, specifically, Prince Street and a portion of Watkins Street; and

WHEREAS, the Redevelopment Agency approved a Replacement Housing Plan for the Lucky's Store Project on May 19, 1998; and

WHEREAS, the City Council of the City of Hayward adopted a mitigated negative declaration for the Lucky's Store Project and approved the ASPI's site plan review application for such Project (SPR 98-130-02) on July 7, 1998; and

WHEREAS, notice of a July 21, 1998 joint public hearing before the City Council in its capacity as the legislative body of the Redevelopment Agency of the City of Hayward (jointly the "City Council") regarding the proposed DDA has been provided as required by law, and the City Council continued such public hearing to July 28, 1998; and

WHEREAS, the draft of the proposed DDA and the Summary Report, a report concerning the terms of the proposed DDA and the terms of sale for the Site One property, has been made available for public inspection in accordance with Health and Safety Code section 33433, part of the Community Redevelopment Law; and

WHEREAS, the City Council held the July 28, 1998 public hearing and has considered the staff report presented to it, as well as other documents and public comments submitted at such hearing regarding the proposed DDA.

NOW, THEREFORE, BE IT RESOLVED by the City Council that it hereby takes the following actions:

1. That it hereby determines that sale of the Agency-owned property to ASPI, and other assistance to be provided to ASPI pursuant to the terms of the DDA, will assist in the elimination of blight in the Downtown Hayward Redevelopment Project area by enabling the development of the retail project proposed by ASPI, and is consistent with the previously adopted Implementation Plan for the Downtown Hayward Redevelopment Project previously adopted by the City Council.
2. That the Executive Director is authorized and directed to execute with ASPI, on behalf of the Redevelopment Agency, a DDA in substantially the same form as the DDA presented to the Agency, together with such non-substantive changes which the Agency's General Counsel deems appropriate.

HAYWARD, CALIFORNIA _____, 1998

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
Secretary of the Redevelopment Agency
of the City of Hayward

APPROVED AS TO FORM:

General Counsel

Attachment A

**SUMMARY REPORT FOR THE
DISPOSITION AND DEVELOPMENT AGREEMENT**

**BETWEEN THE AGENCY AND
AMERICAN STORES PROPERTIES, INC.**

**For The
LUCKY RETAIL DEVELOPMENT AT
A STREET AND MISSION BOULEVARD**

DOWNTOWN HAYWARD REDEVELOPMENT PROJECT

(as required by Section 33433 of the Community Redevelopment Law)

**Redevelopment Agency of the City of Hayward
777 B Street
Hayward, California 94541
510/583-4260**

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BACKGROUND AND PURPOSE

The Community Redevelopment Law of the State of California (specifically Section 33433) requires that whenever a redevelopment agency sells land which it acquired with tax increment funds, the agency must make available to the public a summary of the critical provisions of the agreement between the agency and the developer. The summary is made available to the public at least two weeks in advance of the required public hearing at which the agency will consider the proposed disposition and development agreement (**DDA**) providing for the sale and development of the **property**.

II. DESCRIPTION OF THE PROJECT

The site includes approximately five acres of land located between A and B Streets, from Mission Boulevard to approximately 270 feet west of Watkins Street. Approximately two acres, is **Agency**-owned land or City street. Additionally there are 14 properties under 9 separate ownerships. Please refer to the site map attached to this report at Exhibit A. The project calls for the acquisition and removal of all the buildings on the site, the vacation of Watkins Street between A and B Streets and the public alley known as Prince Street, and the relocation of all tenants on site. It is anticipated that one of the buildings, a Victorian-era residence located at 752 B Street would be moved to an adjacent vacant lot and conveyed to a third party to be rehabilitated. Additionally, another residential structure at 753 A Street, would be offered for sale to a third party who would be responsible for moving the structure off site. The site would then be redeveloped with a 67,389 square foot **Lucky/Sav-on** supermarket, plus approximately 19,600 square feet of additional retail space and 384 parking spaces. The Developer intends to develop the site in accordance with the Redevelopment Plan and as discussed more fully in the DDA for this project.

III. DEVELOPER AND AGENCY RESPONSIBILITIES

The **Developer** of this project is American Stores Properties, Inc. The Developer may convey a portion of the site to a third party developer who will develop that portion with retail shops. The Developer may **partially** assign the DDA to such a third party developer with prior written approval of the Agency, provided that the Developer remains fully responsible to the Agency for the entire project under the DDA.

The **Developer shall be responsible** for the following:

Concurrent with the execution of the DDA, the Developer shall deliver a **performance** deposit to the Agency in the amount of \$25,000 to secure performance of the Developer's obligations under the DDA.

The Developer will attempt to buy the property owned by private third parties. By a certain date, Developer will either acquire the property, or **notify** the Agency that it wants the Agency to acquire.

Prior to the Agency acquiring any property pursuant to the DDA, Developer will approve an Agency Budget for the Total Acquisition Costs of the property, including both **direct** and indirect acquisition costs and relocation costs associated with the property. If the Developer does not approve the Budget, the DDA shall be terminated.

The Total Acquisition Costs will be advanced entirely by the Developer, and the Developer will provide security for the Total Acquisition Costs as follows. Developer will provide a deposit of \$50,000 to be used as Working Capital, and provide a Letter of Credit to **equal** the difference between the Total Acquisition Costs and the Working Capital. Funds required to close escrows for the property to be purchased by the Agency shall be placed into escrow accounts by the Developer prior to the date scheduled for close of escrow.

The Developer shall pay for all costs of relocation associated with the project.

The Developer agrees to purchase the Agency owned property for \$650,000. If hazardous materials are discovered on site prior to sale, the purchase amount may be reduced in order to **remediate** the **property**.

The Developer shall investigate the site and determine whether it is suitable for development. If the Developer determines that the site is unsuitable for development the Developer shall have the option to place the site in a suitable condition for development or terminate the DDA.

The Developer shall develop the site as described above, and shall pay for all costs of construction, all site preparation costs, and all **offsite** costs.

The Developer shall pay prevailing wages during construction, and shall comply with the City and Agency's requirements for disadvantaged business enterprises and women business enterprises. Developer shall not discriminate against any employees or contractors.

The Developer shall attempt to acquire the vacant lot adjacent to 752 B Street, and to relocate the Victorianera building located at 752 B Street to said vacant lot. The Developer shall attempt to convey the building to a qualified non-profit buyer. The Developer shall also offer the residence located at 753 A Street for sale to the general public, including non-profit organizations. The buyer of said residence will be responsible for moving the structure off-site.

The Developer shall attempt to sublease its existing store at 22695 Foothill Boulevard to a tenant which shall be approved by the Agency. The Agency and Developer shall work cooperative to **find** a subtenant for this property that is acceptable to both parties.

The Agency shall be responsible for the following:

The Agency shall prepare the Agency Budget for acquisition of any outstanding properties that the Developer is unable to acquire within 60 days of Developer's notice. The Agency Budget shall consist of all direct and indirect costs to acquire the outstanding properties plus the cost of relocating

the tenants from the site.

Upon approval of the Agency Budget the Agency will attempt to acquire all outstanding parcels on the site on the Developer's behalf. The Agency will promptly convey any parcels to the Developer.

If the Agency is unable to acquire any outstanding properties by negotiation, the Agency will consider adopting resolutions of necessity to acquire the properties by eminent domain. The Agency is not obligated to adopt such resolutions. If the Agency does not adopt the resolutions, the DDA may be terminated.

If resolutions of necessity are adopted by the Agency for outstanding properties on site, the Agency will proceed to acquire such properties by eminent domain and to convey such properties to the Developer when the Agency has received possession of such properties.

The Agency agrees to sell the property that it currently owns to the Developer for \$650,000, upon conveyance of all other outstanding properties to the Developer. The sale of the property shall be in "as is" condition.

The Agency shall enter into a cooperation agreement with the City of Hayward to abandon those portions of Watkins Street and Prince Street which lie within the site.

The Agency shall provide the Developer with a Certificate of Completion for the site upon completion of all construction as outlined in the scope of services.

After transferring the property to Developer, and after all eminent domain actions are completed, Agency will return all remaining funds to Developer with an accounting of the expenditure. If the DDA is terminated, or if a notice of default is delivered by either party, the Agency will not incur any further obligations. The Agency will return funds not needed to pay obligations previously incurred, and will withdraw from eminent domain actions as soon as possible. If an eminent domain action is abandoned, then the Developer will advance funds and augment Letter of Credit necessary to pay for costs of abandonment .

IV. BLIGHT ALLEVIATION AND OTHER PUBLIC BENEFITS

The redevelopment of the site will eliminate a blighting**influence** in the Project Area, as well as help the City achieve its planning objectives for the downtown, by supporting recently developed and proposed residential development in the area. It will serve as a catalyst for additional private reinvestment to eliminate conditions of blight on nearby parcels in the Project Area.

When the Redevelopment Plan was adopted, various parcels in the downtown area were characterized by **underutilization**, deterioration and obsolescence having a negative physical and economic impact on surrounding parcels. The project site contains many parcels exhibiting these features, and it continues to constitute a burden on the community which cannot be reversed or eliminated by private enterprise or government action, or both without Redevelopment. **Furthermore**, the Redevelopment

Project Area including this site is still characterized as blighted under the current definition.

Implementation of the DDA will help meet the goals and objectives set forth in Part IV of the Redevelopment Plan as well as those in the Agency's Implementation Plan, adopted in 1994 and revised in January, 1998.

V. HIGHEST AND BEST USE VALUE OF THE PROPERTY

The Agency received an appraisal of the fair market value of the land that it owns. In accordance with that appraisal, the highest and best use of the Agency's property is for commercial use under the existing zoning. The proposed project is a commercial project. In its highest and best use, the Agency's vacant parcel located at the corner of A Street and Mission Boulevard was valued at \$12 per square foot, the parking lot properties were valued at \$10 per square foot, and those portions of City street under fee title were valued at \$9 per square foot. The portion of Watkins Street owned in fee by the Agency lies adjacent to the parking lot parcels. The properties were valued under the assumption that there were no hazardous materials or other unusual conditions. The following calculates the value of these properties:

<u>Property Location</u>	<u>Area</u>	<u>Value/Sq. Ft.</u>	<u>Price</u>
A & Mission Blvd. APN 428-51-56	6,357	\$12	\$76,284
Parking Lot APN 428-51-58, 61-1 65-3, 65-4 and 66	47,454	\$10	\$474,540
Portion of Watkins St. Abutting Agency land	<u>6,160</u>	<u>\$9</u>	<u>\$55,440</u>
Total	59,971	\$10.10	\$606,264

VI. PURCHASE PRICE TO BE PAID UNDER THE DDA

The Agency has negotiated a price of **\$650,000** for the land under the Agency's ownership. Thus, the Agency considers that the price received for its land is fair market value.

VII. COST OF AGREEMENT TO THE AGENCY

The Agency is specifically not liable for any direct costs associated with the project under the DDA. The Developer is to advance all costs including attorneys and consultants. Previously, the Developer advanced a \$25,000 non-refundable deposit to enter into negotiations with the Agency. The Agency has spent approximately \$25,000 for legal costs to prepare the agreement, and has incurred approximately \$12,000 for relocation consulting services to date. The latter will be billed to the

Developer upon execution of the DDA.

VIII. PROJECTED REVENUE TO THE AGENCY

The following is an estimate of the property tax increment revenues and sales tax revenues that will be generated as a result of this project. These estimates have been provided by the Developer.

ANNUAL PUBLIC REVENUE GENERATION

	Estimated Value	Estimated Tax Revenue
1. Real Property Tax		
Estimated Land Cost	\$5,250,000	
Building Cost	4,645,000	
On Site Improvements	1,030,000	
Fixtures & Equip. Lucky	2,125,000	
Shop tenant Improvements	<u>150,000</u>	
Estimated Value	\$13,200,000	\$135,960
Less Existing Property	(\$1,992,590)	(\$20,524)
Property Tax Increment		\$115,436
2, Saks Tax Generation		
New Lucky Store	\$117,000	
Existing Lucky store	(\$25,090)	
New Shops @ \$150/sq. ft. per year gross sales	\$29,390	
Sales Tax Generation	\$121,300	\$121,300
Total Annual Tax Generation		\$236,736

EXHIBIT A - Lucky/Sav-On Project Area in Downtown Hayward

